THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 6122 of 2003

Oral order:

This petitioner-Motor Driving School, has filed this writ petition assailing the order dated 26.03.2003 passed by the 1st respondent-Joint Transport Commissioner, canceling its licence, based on the complaint lodged by the 2nd respondent.

On the application made by the petitioner, the 1st respondent on 22.03.2001, issued licence for running Motor Driving School. In pursuance thereof, the petitioner has been running the Motor Driving School, and on 11.10.2002, the petitioner states that the 2nd respondent joined the Motor Driving School, and he imparted training to him to his satisfaction. While so, the petitioner states that based on the complaint lodged by the 2nd respondent, the 1st respondent issued notice dated 28.11.2002, calling upon him to explain as to why his licence should not be cancelled, for stopping training to the 2nd respondent in the middle of the course, in violation of the Central Motor Vehicles Rules, 1989. The petitioner states that he submitted detailed explanation on 12.12.2003. However, it is the case of the petitioner that the 1st respondent without considering his explanation and without providing him any opportunity of hearing, passed the impugned order dated 26.03.2003, canceling the licence of the petitioner, which is illegal and arbitrary.

The learned counsel for the petitioner submitted that the impugned order dated 26.03.2003, passed by the 1st respondent canceling the licence of the petitioner, is violative of Rule 28 of the Central Motor Vehicles Rules, 1989. He further submitted that though the petitioner submitted detailed explanation to the show cause notice along with the record showing that he had imparted training to the 2nd respondent for not less than 10 hours as required under Rule 31 of the Central Motor Vehicles Rules, 1989, but the 1st respondent without considering the explanation and without providing him opportunity, has passed the impugned order, canceling the licence of the petitioner, which is illegal and arbitrary.

The 1st respondent filed counter. The learned Government Pleader for Transport appearing for the 1st respondent reiterating the counter averments submitted that the 2nd respondent lodged a complaint stating that he was not imparted training by the petitioner properly, and considering the said complaint, the petitioner was issued show cause notice, and as the petitioner failed to furnish details of the training imparted to the 2nd respondent, the 1st respondent passed the impugned order canceling the licence of the petitioner, and no interference is called for therewith.

Heard the learned counsel for the petitioner and the learned Government Pleader for Transport for the 1st respondent. None appeared for the 2nd respondent.

Rule 28(1) of the Central Motor Vehicles Rules, 1989, which deals with the power of the licensing authority to suspend or revoke licence, reads as follows:

28. Power of the licensing authority to suspend or revoke licence: - (1) If the licensing authority which granted the licence is satisfied, after giving the holder of the licence an opportunity of being heard, that he has –

(a) failed to comply with the requirements specified in sub-rule (3) of rule 24; or
(b) failed to maintain the vehicles in which instructions are being imparted in good condition; or
(c) failed to adhere to the syllabus specified in rule 31 in imparting instruction; or
(d) violated any other provision of rule 27,

it may, for reasons to be recorded in writing, make an order –

(i) suspending the licence for a specified period; or
(ii) revoking the licence.

From the above, it is clear that if the licencing authority which granted the licence is satisfied, after giving the holder of the licence an opportunity of being heard, that he has failed to comply with the requirements, maintain the vehicles, adhere to the syllabus, violated any other provision, he may make an order for suspending the licence for a specified period or revoking the licence. In the instant case, it is the specific case of the petitioner, and as is evident from the counter filed by the respondents, that the 1st respondent before passing the impugned order, suspending the licence of the petitioner, has not provided any opportunity of being heard to him, as is required under Rule 28 of the Central Motor Vehicles Rules, 1989, to substantiate that he has not violated any of the violations enumerated therein. It is the further case of the petitioner that though he submitted his explanation to the show cause notice,

supported with necessary material, the 1st respondent without looking into the same, has passed the impugned order suspending his licence, which is illegal and arbitrary.

Rule 31 of the Central Motor Vehicles Rules, 1989, deals with syllabus for imparting instructions in driving of motor vehicles. It is the case of the respondents that the petitioner violated the provisions of Rule 31(4) of the Central Motor Vehicles Rules, 1989. The said provision, reads as follows:

> The actual driving hours for trainees in driving non-transport vehicles shall not be less than ten hours and actual driving hours for trainees in driving transport shall not be less than fifteen hours.

From the above provision, it is clear that in the case of non-transport vehicles, the actual driving hours for trainees shall not be less than ten hours, and in the case of transport vehicles, the actual driving hours shall not be less than fifteen hours. The petitioner to substantiate his plea that he has not violated the provisions of Rule 31(4) of the Central Motor Vehicles Rules, 1989, and that he had imparted training to the 2nd respondent for not less than ten hours, placed the attendance register and other records before this Court. A perusal of the said record, would show that the 2nd respondent attended training classes for 26 days - ten days regular basic training for more than fifteen minutes and the 16 days driving training for more than 30 minutes, and that considering his age, he has also given him extra training. Thus, it is clear that the petitioner has imparted training to the 2nd respondent for not less than 10 hours.

Be that as it may, since it is the specific case of the petitioner that he has imparted training to the 2nd respondent for not less than 10 hours as is prescribed under Rule 31(4) of the Central Motor Vehicles Rules, 1989, and that the 1st respondent without considering the same, and without providing him opportunity of being heard, as is required under Rule 28 of the Central Motor Vehicles Rules, 1989, has passed the impugned order canceling the licence of the petitioner, I am of the considered opinion that the impugned order having been passed in violation of the statutory rules, cannot be sustained, and the same is liable to be set aside.

Hence, the impugned order dated 26.03.2003, passed by the 1st respondent suspending the licence of the petitioner, is set aside. This order, however, does not preclude the 1st respondent to pass appropriate orders afresh after considering the explanation submitted

by the petitioner supported by necessary material and after providing opportunity of being heard to the petitioner.

Accordingly, the writ petition is allowed with the above directions. No costs.

N.V. RAMANA, J.

Dated: 22nd August, 2007
KSR